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CITY OF VISALIA

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA**

LIDLAW TRANSIT SERVICES, INC.

Plaintiff,

vs.

CITY OF VISALIA,

Defendant.

CITY OF VISALIA,

Counter-Claimant,

vs.

LIDLAW TRANSIT SERVICES, INC.

Counter-Defendant.

CASE NO: 1:05-cv-0199-AWI-SMS

**STIPULATION OF DISMISSAL  
AND ORDER THEREON**

A written settlement agreement having been reached, Plaintiff/Counter-Defendant LIDLAW TRANSIT SERVICES, INC., through its counsel, HAGER, TRIPPEL, MACY & JENSEN and DUNN, LEE & KEARY and Defendant/Counter-Claimant CITY OF VISALIA, through its counsel, DOOLEY HERR & PELTZER, LLP hereby stipulate that the above-captioned matter be dismissed with prejudice pursuant to FRCP 41(a)(1).

DOOLEY HERR & PELTZER  
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DATED: June 20, 2006 HAGER, TRIPPEL, MACY & JENSEN

By: /s/ Paul R. Hager  
PAUL R. HAGER  
Attorney for LAIDLAW TRANSIT SERVICES, INC.

DATED: June 20, 2006 DUNN, LEE & KEARY

By: /s/ Stephen W. Dunn  
STEPHEN W. DUNN  
Attorney for LAIDLAW TRANSIT SERVICES, INC.

DATED: June 20, 2006 DOOLEY HERR & PELTZER, LLP

By: /s/ Leonard C. Herr  
LEONARD C. HERR  
Attorney for CITY OF VISALIA

## ORDER

The parties seek dismissal of this action pursuant to Rule 41(a) of the Federal Rules of Civil Procedure. Rule 41(a)(1), in relevant part, reads:

an action may be dismissed by the plaintiff without order of court (i) by filing a notice of dismissal at any time before service by the adverse party of an answer or of a motion for summary judgment, whichever first occurs, or (ii) by filing a stipulation of dismissal signed by all parties who have appeared in the action. Unless otherwise stated in the notice of dismissal or stipulation, the dismissal is without prejudice, except that a notice of dismissal operates as an adjudication upon the merits when filed by a plaintiff who has once dismissed in any court of the United States or of any state an action based on or including the same claim.

Rule 41(a)(1)(ii) thus allows the parties to dismiss an action voluntarily, after service of an answer, by filing a written stipulation to dismiss signed by all of the parties who have appeared, although an oral stipulation in open court will also suffice. Carter v. Beverly Hills Sav. & Loan Asso., 884 F.2d 1186, 1191 (9th Cir. 1989); Eitel v. McCool, 782 F.2d 1470, 1472-73 (9th Cir. 1986). Once the stipulation between the parties who have appeared is

properly filed or made in open court, no order of the court is necessary to effectuate dismissal. Fed. R. Civ. Pro. 41(a)(1)(ii); Eitel, 782 F.2d at 1473 n.4.

Therefore, IT IS HEREBY ORDERED that this action is DISMISSED and the Clerk of the Court is DIRECTED to close this case in light of the parties' filed and signed Rule 41(a)(1)(ii) Stipulation For Dismissal With Prejudice.

IT IS SO ORDERED.

**Dated: June 21, 2006**  
0m8i78

/s/ Anthony W. Ishii  
UNITED STATES DISTRICT JUDGE

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& PELT  
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